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McClain of Georgia, Inc. and Shopmen's Local Union No. 616 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO. Case 10-CA-29919

November 7, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND HIGGINS

Pursuant to a charge filed on January 23, 1997, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on May 16, 1997, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's requests to bargain and to provide information following the Union's certification in Case 10-RC-14578. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an amended answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On October 3, 1997, the General Counsel filed a Motion for Summary Judgment. On October 7, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted.

Ruling on Motion for Summary Judgment

In its amended answer the Respondent admits its refusal to recognize and bargain and to furnish information, but attacks the validity of the certification on the basis of the Board's disposition of certain challenged ballots in the representation proceeding. In addition, the Respondent denies that the information requested by the Union is necessary and relevant.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.¹ The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable

¹ See 322 NLRB 367 (1996).

in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no issues warranting a hearing with respect to the information requested by the Union. The Union requested that the Respondent furnish it with the following information: (1) name of each production and maintenance employee; (2) date hired; (3) present hourly rate of pay; (4) job classification or description of work performed; (5) descriptive outline of any bonus or incentive plan; (6) explanation of vacation benefits, if any; (7) explanation of group insurance welfare benefits, or pension plan, if any, including full explanation of cost thereof; and (8) explanation of any other fringe benefits applicable to the Company's production and maintenance employees. Although the Respondent denies that this information is necessary and relevant to the Union's role as the exclusive bargaining representative of the unit employees, it is well-established that such information is presumptively relevant and must be furnished on request. See e.g., *Trustees of the Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

Accordingly, we grant the Motion for Summary Judgment² and will order the Respondent to recognize and bargain with the Union and to furnish it the information requested.³

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Georgia corporation, with an office and place of business in Macon, Georgia, has been engaged in the manufacture of solid waste handling equipment and containers. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, sold and shipped from its Macon, Georgia facility finished products valued in excess of \$50,000 directly to customers located outside the State of Georgia.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

² We therefore deny the Respondent's request that the complaint and notice of hearing be dismissed and that the Respondent be awarded costs and attorneys' fees.

³ Member Higgins did not participate in the underlying representation proceeding. He agrees, however, that the Respondent has not raised any representation issue that is properly litigable before the Board in this "technical" refusal to bargain unfair labor practice proceeding and that summary judgment is therefore appropriate.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held February 23, 1995, the Union was certified on November 12, 1996, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time hourly production and maintenance employees, including yardmen, maintenance employees, machine shop employees, welders, painters, grinders and leaders (leadmen) employed by the Employer at its 1166 Fulton Street, Macon, Georgia facility, but excluding all salaried employees, including office clerical employees, accounts receivable employees, payroll employees, production control clerks, engineers, managerial employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

About December 6 and 23, 1996, the Union requested the Respondent to bargain and to furnish information, and, since about December 6, 1996, the Respondent has failed and refused. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after December 6, 1996, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817

(1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, McClain of Georgia, Inc., Macon Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Shopmen's Local Union No. 616 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time hourly production and maintenance employees, including yardmen, maintenance employees, machine shop employees, welders, painters, grinders and leaders (leadmen) employed by the Employer at its 1166 Fulton Street, Macon, Georgia facility, but excluding all salaried employees, including office clerical employees, accounts receivable employees, payroll employees, production control clerks, engineers, managerial employees, guards and supervisors as defined in the Act.

(b) Furnish the Union the information that it requested on December 23, 1996.

(c) Within 14 days after service by the Region, post at its facility in Macon, Georgia, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not

⁴If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 23, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 7, 1997

William B. Gould IV,	Chairman
Sarah M. Fox,	Member
John E. Higgins, Jr.,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Shopmen's Local Union No. 616 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time hourly production and maintenance employees, including yardmen, maintenance employees, machine shop employees, welders, painters, grinders and leaders (leadmen) employed by us at our 1166 Fulton Street, Macon, Georgia facility, but excluding all salaried employees, including office clerical employees, accounts receivable employees, payroll employees, production control clerks, engineers, managerial employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on December 6 and 23, 1997.

MCCLAIN OF GEORGIA, INC.